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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

IN THE MATTER OF:

Administrative Action

GUY WARREN HENRY, D.D.S.

ORDER

Licensed to Practice Dentistry
in the State of New Jersey

This matter was opened to the New Jersey State Board of Dentistry (Board), by Deborah T. Poritz, Attorney General of New Jersey, by Kathy Rohr, Deputy Attorney General, upon a Notice of Motion for Enforcement of Board Order and Suspension of License, supported by the Certification of Kathy Rohr, D.A.G. and the accompanying reports provided by Dr. Frederick Rotgers, including a laboratory report disclosing a positive confirmed urine test for cocaine for the respondent. The Board also considered the written report submitted by Gerald E. Weinstein, M.D., respondent's treating psychiatrist. In the report Dr. Weinstein sets forth the cause of the lapse to drug usage as respondent's self-destructive pattern of spoiling his success. Dr. Weinstein recommends that respondent can carry out his dental practice in a responsible way. Respondent personally appeared before the Board with counsel on March 23, 1994 to respond to this Motion. Dr. Frederick Rotgers, from the N.J.D.S. Chemical Dependency Program

and Dr. Gabriel Longo, respondent's treating psychologist also testified.

On February 25, 1993 respondent entered into a Consent Order with the Board. The Board had received an investigative report from the Enforcement Bureau of the Division of Consumer Affairs disclosing that respondent admitted to diverting and to self-administering certain controlled dangerous substances over a period of time. In lieu of suspension of respondent's license, respondent was required to perform fifty (50) hours dental community service, to attend support groups as recommended by his treating psychiatrist, and to continue in therapy and to have his medication monitored as recommended by his treating psychiatrist. The Order further prevented respondent from prescribing or possessing controlled dangerous substances except under defined conditions.

In addition, the Order required respondent to enroll in the New Jersey Dental Association Chemical Dependency Program (C.D.P.) and to submit to twice weekly urine monitoring utilizing a forensic chain of custody protocol. The Order further provided that continued licensure with restrictions was to be expressly contingent upon strict compliance with all of the terms and conditions of the Order.

On or about March 4, 1994 the Board received information from Frederick Rotgers, Psy.D., Staff Clinician of the C.D.P. that Eastern Labs returned a report to the C.D.P. disclosing a positive confirmed urine test for cocaine for

respondent. As a consequence of this test result, a hearing was held before the Board on March 23, 1994 to determine whether respondent presented a danger to the public in that he has not complied with the terms and conditions of the Consent Order. Respondent was represented by Pamela Mandel, Esq. The Attorney General of New Jersey appeared through Kathy Rohr, Deputy Attorney General.

Counsel presented argument on behalf of respondent with respect to the issue of his cocaine use. Initially, it was pointed out that respondent sought help for his drug problem in 1992 by seeking treatment from Gerald E. Weinstein, M.D. and had entered an in-patient program at the Carrier Institute in July 1992. It was asserted that respondent had been sober since that time period and had been scheduled to appear before the Board for modification of the Order. Counsel stated that she had intended to seek a reduction in the number of days per week required for urine monitoring and a modification of the restrictions on respondent's license.

To account for respondent's lapse due to cocaine use, counsel indicated that respondent has demonstrated a pattern of getting close to success with respect to educational or employment demands placed upon him and then sabotaging his own success in these endeavors. She explained that prior to her filing a request to modify the Consent Order respondent used the cocaine on a Saturday, without thinking.

Respondent presented testimony concerning his family

background, including an alcoholic father, and the attendant problems his family experienced because of the alcohol problem. He described the negative impact that his relationship with his father had on him. He explained that an outgrowth of that experience was that he began a self-destructive pattern of behavior which caused him to sabotage his success when he approached the point of succeeding in an endeavor.

Respondent testified that he had not abused drugs since 1992. He further stated that he knew that his attorney was planning to file a request to modify some of the terms of the Order. He explained to the Board that on a Saturday he went to visit neighbors who offered him some cocaine. He stated that he took the cocaine without thinking about the consequences. He told the Board that this was his only episode of drug use in sixteen (16) months.

Respondent also represented to the Board that it would be a financial hardship if he were required to pay for twice a week urine monitoring utilizing a forensic protocol. In support of his financial status, he explained that he had enormous student loans to repay as well as outstanding payments for the dental practice he purchased several years ago.

Dr. Gabriel Longo, a licensed psychologist in cognitive therapy, testified with respect to the self-destructive behavior of respondent as the cause for respondent's mindless use of cocaine. Dr. Longo explained that he had been working with respondent on the behavior problem over an extensive period of

time. In his opinion, respondent was a good person who had worked hard to become a dentist. He represented to the Board that respondent was troubled in a way that has nothing to do with his practice of dentistry.

Dr. Rotgers presented testimony regarding the receipt of the positive test results. He stated that he received the positive laboratory results on March 4, 1994. Further, he indicated that respondent was called by C.D.P. on February 3, 1994 to appear for a urine test. The Board, focusing on the fact that it had been stated that respondent used cocaine at least six days prior to collection, questioned Dr. Rotgers about the length of time cocaine stays in the body. Dr. Rotgers testified that cocaine stays in the body several days, depending on an individual's metabolism.

The Board also elicited testimony from Dr. Rotgers concerning the difference between the protocol used by the laboratory for forensic chain of custody and that used for standard testing. Dr. Rotgers explained that the forensic testing costs \$65 per specimen, while the standard testing costs \$30 per specimen. As he pointed out, the difference between the two is in the recordkeeping. He represented to the Board initially that he had not received a copy of the Order and therefore urine samples had been monitored by the C.D.P. using the standard method until such time as he was notified by the Board in December of 1994 that the Order mandated a forensic chain of custody protocol for the urine monitoring of respondent.

Dr. Rotgers, when asked by the Board if there would be any problems associated with forensic testing for respondent, indicated that respondent could not afford the cost of forensic testing.

Dr. Rotgers concluded his testimony by stating that respondent is not a typical client and his use of drugs was linked to his psychiatric status. He expressed an opinion that respondent does not present a threat to his patient population. In accordance with that opinion, Dr. Rotgers recommended that the Board continue the requirements set forth in the Order, and amend the Order to require respondent to participate in a self-help group. He further urged the Board to waive the requirement for the forensic chain of custody protocol.

The Deputy Attorney General, in providing the background of this case, acknowledged that at the time of the Enforcement Bureau's investigation revealing the use of certain Controlled Dangerous Substances by respondent, respondent was forthcoming and admitted that he had abused drugs. She stated that in light of respondent's emotional background and his treatment attempts, the parties entered into the Order, allowing respondent to practice dentistry under certain conditions. On the issue of the use of the forensic or standard monitoring protocol, she maintained that standard monitoring could be employed only if respondent waived the right to assert a chain of custody defense.

The Board conducted its deliberations of the record

before it in Executive Session on March 23, 1994. The Board was not convinced or persuaded by respondent's argument that his one time use of cocaine on the eve of applying to the Board for a modification hearing was prompted by his habitual pattern of sabotaging his own success when he is at a point in time that he is close to succeeding in an endeavor. Further, the Board had great concerns that respondent may have used cocaine more than one time as there was a period of six (6) days between the day respondent indicated he used the cocaine and the date that the positive urine sample was taken. Since respondent could not definitively recall the date he used the cocaine, the Board does not find his testimony credible that he had only used cocaine one time and that he had done so on a Saturday in the afternoon. The Board believes and finds that respondent is not yet in sufficient recovery. Accordingly, in order to assure that respondent continues toward full recovery, the Board will continue its order that respondent participate in therapy. Additionally a requirement that respondent enroll and participate in a support group will be instituted.

The Board further finds there is a basis for ordering sanctions against respondent in light of his serious unlawful possession of cocaine in January 1994 as well as its use which clearly violated the Board's prior Order. It cannot be stated too forcefully that the Board's Order must be complied with in order that the public be protected from substandard dentistry. The Board continues to believe that the unlawful use and

possession of illicit drugs by its licensees presents a serious threat to the health, safety and welfare of dental patients. Since respondent's conduct disregarded both the Board's prior Order and fundamental concepts of professional behavior and conduct, the Board finds it necessary to again articulate restraints and standards tailored to conform respondent's conduct for the public's protection. Accordingly,

IT IS, THEREFORE, ON THIS 6 DAY OF April, 1994

ORDERED THAT:

1. The license of Guy Warren Henry, D.D.S. to practice dentistry in the State of New Jersey shall be and is hereby suspended for a period of five (5) years. The entire five (5) year period of suspension shall be stayed and shall constitute a probationary period so long as respondent complies with all of the other terms of this Order.

2. Respondent shall continue enrollment and participation in the New Jersey Dental Association Chemical Dependency Program (C.D.P.) and shall comply with a monitoring program supervised by C.D.P. which shall include, at a minimum, the following conditions:

(a). Respondent shall have his urine monitored under the supervision of the C.D.P. on a random, unannounced basis, twice weekly. The urine monitoring shall be conducted with direct witnessing of the taking of the samples either from a volunteer or drug clinic staff as arranged and designed by the C.D.P. The initial drug screen shall utilize the EMIT technique

and all confirming tests and/or secondary tests will be performed by gas chromatography/mass spectrometry (G.C./M.S.). The C.D.P. shall be responsible to assure that all urine samples are handled by a laboratory competent to provide these services.

The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge unless respondent immediately notifies the Board in writing that he has elected not to utilize the forensic chain of custody protocol and that he has also waived any defense he might assert that a positive urine sample was not his sample and such sample was not subject to a chain of custody.

All test results shall be provided in the first instance directly to the C.D.P., and any positive result shall be reported immediately by the C.D.P. to Agnes Clarke, Executive Director of the Board, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

Any failure by the respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event the respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other

impossibility, consent to waive that day's test must be secured from Dr. Frederick Rotgers or Dr. Barbara McCrady of the C.D.P. Neither the volunteer nor drug clinic staff shall be authorized to consent to waive a urine test. In addition, respondent must provide the C.D.P. with written substantiation of his inability to appear within two (2) days, e.g., a physician's report attesting that the respondent was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of the respondent that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day. The C.D.P. shall advise the Board of every instance where a request has been made to waive a urine test together with the Program's determination in each such case.

The Board may in its sole discretion modify the frequency of testing or method of reporting during the monitoring period.

(b). Respondent shall attend the Rational Recovery support group, as recommended by Dr. Rotgers, at least once a week. Respondent shall provide evidence of attendance at such group directly to the C.D.P. on a form or in a manner as required by the C.D.P. The C.D.P. shall advise the Board immediately in the event it receives information that respondent has discontinued attendance at this support group.

(c). The C.D.P. shall provide quarterly reports to the

Board in regard to its monitoring of respondent's program as outlined herein including, but not limited to, the urine testing and the attendance at support groups. The Program shall attach to its quarterly reports any and all appropriate reports and/or documentation concerning any of the monitoring aspects of the within program.

(d). Respondent shall continue in therapy on a biweekly basis with Dr. Weinstein and Dr. Longo and shall have his medication monitored at a frequency as recommended with Gerald E. Weinstein, M.D. of Princeton, New Jersey. Respondent shall cause Dr. Weinstein to provide quarterly reports directly to the Board with respect to his attendance and progress in therapy.

(e). Respondent shall not prescribe controlled dangerous substances nor shall he possess such substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause. Respondent shall cause any physician or dentist who prescribed medication which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than seven (7) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

(f). Respondent shall cease and desist any use of parenteral conscious sedation for dental patients and shall

immediately submit his PCS permit to the Board of Dentistry.

(g). Respondent shall provide appropriate releases to any and all parties who are participating in the monitoring program as outlined herein as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner.

3. All costs associated with the monitoring program as outlined herein shall be paid directly by the respondent.

4. Respondent shall perform two (200) hundred hours of dental community service at a facility designated and/or provided by the Board. Said community service shall be completed within one year from the first day of performance. Respondent shall comply with the dental protocol and procedures as required at the designated facility and shall perform said services in accordance with the schedule established by respondent and the facility. In the event the performance of the community service at the first designated facility is discontinued for any reason whatsoever respondent shall perform the balance of required hours at an alternate facility designed by the Board. In the event that respondent conducts any portion of said dental community service in his dental office, he shall document and maintain a record of the patient's name, type of treatment and the amount of time expended.

5. Prior to filing a petition for modification of the within Order, the respondent shall submit to a psychological evaluation by a licensed psychologist to be selected by the

Board.

6. It is expressly understood and agreed that continued licensure with restrictions as ordered herein is contingent upon strict compliance with all of the aforementioned conditions. Upon the Board's receipt of any information indicating that any term of the within Order has been violated in any manner whatsoever, including, but not limited to, a verbal report of a confirmed positive urine or any other evidence that respondent has used an addictive substance, a hearing shall be held on short notice before the Board or before its representative authorized to act on its behalf. The proofs at such a hearing shall be limited to evidence of the particular violation at issue. Any confirmed positive urine test shall be presumed valid, and respondent shall bear the burden of demonstrating its invalidity.

7. Respondent shall have leave to apply for modification of the terms and conditions of the within Order no sooner than one (1) year from the entry date herein.

8. This Order shall supercede any and all provisions of the Board's prior Order of February 25, 1993.

STATE BOARD OF DENTISTRY

By: 
Marvin Gross, D.D.S., President